COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.24 OF 2004 (S/B)
(Old No. 650 of 1987)

Chandra Singh Kharai aged about 56 years, S/o Shri Padam Singh Kharai, R/o Bal Baba Mandir, Village Foot Kuna, P.O. Deval Chaur, Haldwani, Distt. Nainital

…….. Petitioner

Versus

1. The State of Uttar Pradesh through its Secretary in the Industries Department, Secretariat, Lucknow
2. Deputy Director, Silk Industries, Prem Nagar, Dehradun
3. Assistant Director, Silk Industries, Haldwani, District Nainital
4. Inspector Silk Industries, Swar, Distt. Rampur
5. The U.P. Public Services Tribunal No. 3, Jawahar Bhawan, Lucknow

…… Opp.parties

Sri B.S. Adhikari, learned counsel for the appellant.
Sri Bhupendra Singh, learned counsel for the opposite parties.

Coram: Hon. P.C. Verma, J.
Hon. B.S. Verma, J.

Dated: May 05, 2005

This writ petition has been filed by the petitioner challenging the judgment dated 22.10.1986 passed by the U.P. Public Service Tribunal No.III, Jawahar Bhawan in Claim Petition No.259(f)/III/89. The claim petition was filed by the petitioner challenging the termination order dated 10.12.1979. In the termination letter, it was stated that the service of Sri Chandra Singh Kharai,

Bhootpurva Keetpalak, Resham Yojna, Swar Range, Rampur is terminated w.e.f. 16.01.1978.

The petitioner was appointed as Keet Palak, which is a Class-IV post w.e.f. 08.11.1956 and since then he was serving in the department. The steps for regularization of services of the petitioner were taken vide order dated 18.05.1976 and for which the Assistant Director, Resham Department, Haldwani, Distt. Nainital was required to submit the medical certificate by C.M.O., character certificates by two Gazetted Officers and certificate of qualification by 28.05.1978. This order was issued on 18.05.1976.

The petitioner appears to have been considered for regularization. Since the petitioner was serving from 08.11.1956 and he was considered for regularization and though there is no order of regularization but still it appears that the petitioner treated to be a regular employee when the services of the petitioner was terminated.

The reasons for termination as stated in the written statement filed by the U.P. Public Service Tribunal was that the petitioner was absconding from his services from 16.01.1978. It was also

stated that a registered notice was sent to him to join service, but the said notice returned unserved. The service notices were issued to the petitioner and the news was published in daily publication even then he did not turn up to join the service. The Tribunal dismissed the claim petition on the ground that the petitioner was absconding and held that the termination order was valid.

The U.P. Public Service Tribunal fell into error in not taking into account that the petitioners' services stood regularized after 18.05.1973 and before 16.01.1978, the petitioner was a permanent employee and his services could be terminated only after holding a departmental enquiry even if he was absconding or overstaying the leave. No chargesheet was given to the petitioner, no enquiry was held and services of the petitioner were terminated with retrospective effect, which is not permissible under law.

Therefore, the judgment of U.P. Public Service Tribunal cannot be sustained and is hereby set aside. Accordingly, the termination order is also set aside as the same has been passed without affording any opportunity to the petitioner.

Since, the petitioner is retired, the petitioner shall be treated to be in service for the purpose of pensioner benefits and we feel that a lump sum amount of Rs.1.50 lacs (Rupees one lac fifty thousand only) would be sufficient towards back wages.

The writ petition is allowed accordingly.

(B.S. Verma, J.) **(P.C. Verma, J.)**

Rajeev Dang